

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
LOWELL KERN, JOSEPH BALL, MICHELLE
SHAPIRO, and STEVE HERMIDA individually
and on behalf of all others similarly situated,

Plaintiffs,

-against-

STUBHUB, INC.,

Defendant.

ANALISA TORRES, District Judge:

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24 Civ. 871 (AT)

ORDER

The Court is in receipt of Defendant StubHub, Inc.’s motion to compel arbitration. ECF No. 22. On a motion to compel arbitration, an agreement to arbitrate exists “where the notice of the arbitration provision was reasonably conspicuous and manifestation of assent [is] unambiguous as a matter of law.” *Meyer v. Uber Techs., Inc.*, 868 F.3d 66, 76 (2d Cir. 2017) (citation omitted). To determine whether notice was reasonably conspicuous in cases involving “clickwrap” or “scrollwrap” agreements, the Second Circuit has directed district courts to “evaluate visual evidence that demonstrates whether a website user has actual or constructive notice of the conditions,” such as screenshots of the relevant web or mobile pages. *Zachman v. Hudson Valley Fed. Credit Union*, 49 F.4th 95, 103 (2d Cir. 2022) (internal quotation marks omitted).

StubHub has provided a screenshot of the “full checkout screen the purchaser would see on StubHub.com.” ECF No. 31 ¶ 4. But, two of the Plaintiffs allege that they purchased tickets on StubHub’s mobile application. ECF No. 20 ¶¶ 9–10. Without screenshots of the checkout process on the mobile application, the Court cannot assess whether notice was reasonably conspicuous for mobile users.

Accordingly, by **October 4, 2024**, StubHub may submit a supplemental declaration that includes screenshots of the relevant portions of its mobile application during the period at issue in this case.

SO ORDERED.

Dated: September 20, 2024
New York, New York



ANALISA TORRES
United States District Judge